

**IN THE UNITED STATES COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THOMAS SEBASTIAN,

Plaintiff

v.

MILLCREEK TOWNSHIP, a municipal
corporation, JOSE DELGADO, JR., an
individual and JASON SHRADER, an
individual,

Defendants

NO. 1:23-CV-00002

JURY TRIAL OF 12 DEMANDED

**MOTION TO DISMISS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE
12(B)(6)**

AND NOW, comes the Defendant, Millcreek Township¹, by and through its attorneys MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN and in support of the instant motion, avers as follows.

Procedural and Factual History

1. Plaintiff commenced this action by the filing of a Complaint [*ECF 1*] on or about January 5, 2023, alleging violations of his federal constitutional rights under the First, Fourth and Fourteenth Amendments by Defendants, Jose Delgado, Jr. and Jason Shrader, police officers with the Millcreek Township Police Department. Plaintiff also raised state law claims of assault, battery, false arrest, false imprisonment and malicious prosecution under state law against the Defendant officers. Plaintiff has also raised a *Monell* claim against Millcreek Township.

2. Plaintiff then filed a First Amended Complaint [*ECF 5*] on February 22, 2023, in order to substitute Defendant, Jason Shrader, for Officer #2.

¹ The instant Motion to Dismiss is filed on behalf of Millcreek Township only. Defendants, Jose Delgado, Jr. and Jason Shrader, filed an Answer in response to Plaintiff's Second Amended Complaint.

3. After Plaintiff filed his First Amended Complaint, the undersigned attorney for the Defendant conferred with Plaintiff's attorney regarding legal deficiencies with respect to the *Monell* claim raised against the Township and consented to Plaintiff filing a Second Amended Complaint in order to cure those deficiencies.

4. On April 13, 2023, Plaintiff filed a Second Amended Complaint [*ECF 11*] in an attempt to cure the legal deficiencies with respect to the *Monell* claim against Millcreek Township.

Plaintiff's *Monell* Claim Against Millcreek Township

5. As stated in more detail in the accompanying Brief, the Plaintiff's *Monell* claim against Millcreek Township is legally deficient in that it fails to identify any specific policy, practice or custom of Millcreek Township that is unconstitutional or that was followed by the Defendant officers that resulted in a violation of the Plaintiff's constitutional rights. Instead, the *Monell* claim in essence attempts to hold the Township liable for the actions of its police officers by way of a *respondeat superior* theory of liability which is prohibited in federal civil rights litigation.

6. In paragraph 46 including subparagraphs a. through f., Plaintiff sets forth the actions of the Millcreek Township Police Department's former police chief, all occurring after the arrest of Mr. Sebastian, which form the basis of the *Monell* claim against the Township. [*ECF 11*, ¶46]

7. Further, in paragraphs 38 through 40 of the Second Amended Complaint, Plaintiff details the actions of the former police chief which support his *Monell* claim. . Each of these alleged actions occurred after the arrest of Mr. Sebastian. [*ECF 11*, ¶38-40]

8. In essence, the theory against Millcreek Township is that the Township, through its former police chief, ratified the actions of the Defendant police officers after the arrest of Mr. Sebastian by way of the former chief's alleged public statements justifying Sebastian's arrest. The factual and legal basis set forth in the Second Amended Complaint is legally inadequate to establish a viable *Monell* claim against Millcreek Township and therefore, Count II of the Plaintiff's Second Amended Complaint must be dismissed.

9. Given the fact that the Plaintiff has already amended his Complaint twice, the Defendant avers that any further amendment of the Complaint in order to attempt to plead a viable *Monell* claim against Millcreek Township should be denied as futile.

WHEREFORE, for the reasons stated herein, the Defendant, Millcreek Township, respectfully requests an Order from this Honorable Court granting its Rule 12 Motion to Dismiss and thereby dismissing Count II, the *Monell* claim against Millcreek Township, with prejudice.

Respectfully submitted,

**MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN**

By



Patrick M. Carey, Esquire
717 State Street, Suite 701
Erie, PA 16501
(814) 480-7800

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CERTIFICATE OF CONFERRAL

I, Patrick M. Carey, Esquire, counsel for Defendant, Millcreek Township, certify that I conferred with the Plaintiff's attorney, Richard E. Filippi, Esquire, regarding the issues contained in the Plaintiff's Second Amended Complaint relative to the *Monell* claim against Millcreek Township, that are now the subject of the Defendant's Rule 12 Motion to Dismiss.

Respectfully submitted,

**MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN**

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) was duly served on all counsel of record and unrepresented parties on the 26th day of April, 2023, electronically, courthouse box or by mailing same to them at their designated offices by first class United States mail, postage prepaid.

Richard E. Filippi, Esquire
102 East 4th Street
Erie, PA 16507
Attorney for Plaintiff

**MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN**

By 
Patrick M. Carey